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163-682

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

NOS. 991 AND 992. 261+262.

ANNE CROPPER AND JOHN CROPPER,
Plaintiffs in Error,

vs.

ABBY K. McLANE AND JAMES L. McLANE.
Defendants in Error.

EXTRACTS FROM RECORD.

ENOCH TOTTEN,
GORDON & GORDON,
for Defendants in Error.

SHELLABARGER & WILSON,
BLAIR LEE,
for Plaintiffs in Error.

Law Reporter Print, 518 Fifth St.

IN THE

Supreme Court of the District of Columbia.

ANNE CROPPER AND JOHN CROPPER

vs.

ABBY K. McLANE AND JAMES L. McLANE.

EXTRACTS FROM RECORD IN 992.

UNITED STATES OF AMERICA,
District of Columbia, ss:

BE IT REMEMBERED, That in the Supreme Court of the District of Columbia, in the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

Will of Allan McLane.

[Filed December 22, 1891.]

I, ALLAN MCLANE, a citizen of the United States of America, residing at No. 1500 Vermont avenue, Iowa Circle, in the city of Washington, in the District of Columbia, being of sound mind and disposing memory, do make, publish and declare this as and to be my last will and testament, hereby revoking and making null and void all other wills and testaments by me heretofore made.

First. I nominate, constitute and appoint my wife, Abby, executrix, and my brother, James L. McLane, executor of this my last will and testament; and further, I direct and request that they and each of them be not required to give bond for the performance of her or his duty as such executrix or executor. I also nominate, constitute and appoint my brother, James L. McLane, trustee, to execute the trusts declared in the fifth paragraph of this my will, and direct

and request that he be not required to give bond for the performance of his duties as such trustee. I hereby give to my wife Abby the sum of $5,000 for her services as executrix, which is to be in lieu of all other compensation or commission for her services in the management of my estate in any capacity whatsoever; and I direct that my brother, James L. McLane, shall be paid for his services as such executor and trustee such commissions as are allowed under the laws in force in the District of Columbia.

Second. All expenses in connection with my funeral and all my just debts being provided for; and also, $5,000, taken from my estate and paid immediately after my death to my wife, Abby; I give, bequeath and devise to my daughter Anne Cropper, the sum of $5,000 in trust (and without her being required to give bond therefor) to hold and invest the same and pay the interest therefrom as it shall accrue, to her mother's faithful servant, Bridget Maguire, for and during her life, the same being for the support to that extent of the said Bridget and of the mother of said Bridget; and should the said Bridget die before her mother, then I direct the said interest to be paid to the mother of said Bridget for her life; and, on the death of the said Bridget and her said mother, I direct that said principal sum of $5,000 shall fall back into my said estate and be disposed of as provided for the balance of my estate in the fifth paragraph of this, my last will and testament. Further, I give, bequeath and devise to my wife Abby the sum of $5,000 in trust (and without her being required to give bond therefor) to hold and invest the same, and pay the interest therefrom as it shall accrue, to Mrs. M. J. Westfall (of Greenport, Suffolk county, Long Island, New York), for and during her life, and on the death or remarriage of Mrs. M. J. Westfall, I direct that said principal sum of $5,000 shall fall back into my estate, and be disposed of as provided for the balance of my estate, in the fifth paragraph of this, my last will and testament.

Third. I give and devise my dwelling house and land, with the stable and land thereto attached, where I now reside, being No. 1500 Vermont avenue, Iowa Circle, in said city of Washington, and with all the appurtenances to both belonging, to my wife Abby, and her heirs. And I also give and bequeath to my said wife all the household furniture belonging to me in said dwelling house, as also my china, glass, silver and plated ware, pictures, jewelry, ornaments, books and all similar articles, and also the carriages, harness and the like, and horses at the stable; excepting, however, my ring, with Cæsar's head, and the pictures of my daughter Anne's mother, of my daughter Anne and of my own family; and also excepting such articles as may have belonged specially to my daughter Anne's mother, such as her jewelry case and wedding presents, other than table silver, all of which excepted articles I give and bequeath absolutely to my daughter Anne; I further give and bequeath to my wife Abby, to my daughter Anne and to my brother James L. McLane, respectively, one-third of the wines and liquors of which I may die possessed and wheresoever situated. Further, I give and devise unto my daughter Anne, and her heirs, my dwelling house and land, together with the attached stable and land, and with all the appurtenances to both belonging, at Narragansett Pier, Rhode Island, and known as "Gillian Lodge," to hold the same free from the control of, and from liability for the debts of, her present husband or any future husband she may have. I also give and bequeath to her all the household furniture in said house and the other articles therein (as given to my wife with the house in Washington), excepting, however, such articles therein as may specially belong to my wife, to my wife's mother or to others. Should, however, my said daughter Anne die before me, then I give and devise unto my wife, and her heirs, the said "Gillian Lodge" property with the household furniture and other articles therein contained.

Fourth. I give, devise and bequeath absolutely to my daughter Anne, and her heirs, all my right, title and interest in the San Francisco Water Lot Property of the estate of her grandfather, Eben Knight, which said property is now being managed for the heirs by Captain Oliver Eldridge. And I further give, devise and bequeath to my daughter Anne, any lien, right, title and interest I may have in the life insurance policy, No. 6,611, for ten thousand dollars, in the Washington Life Insurance Company of New York on my life.

Fifth. After the payments of my debts, expenses of probate of this my last will and testament, and of the legacies herein mentioned, I direct that the balance of my estate, real, personal and mixed, of which I shall die possessed or to which I shall be entitled at the time of my death, and wheresoever situate, be divided into two equal parts or shares, and I give, devise and bequeath one part or share of the said two equal parts or shares, unto my wife Abby, her heirs, executors or administrators, the same to be received by her in lieu of dower. The other or remaining part or share of the said two equal parts or shares of the balance of my said estate, in the event of my leaving me surviving a child or children of my wife Abby, or in the event of their being born to me of my wife Abby a posthumous child or children, I give, devise and bequeath in fee, unto my daughter Anne and to such child or children by my wife Abby, share and share alike. In the event, however, of my not leaving me surviving a child or children of my wife Abby, or in the event of there not being born to me, of my said wife a posthumous child or children, then I give, devise and bequeath the said other and remaining part or share of said two equal parts or shares of the balance of my said estate, unto my brother James L. McLane, his heirs, executors and administrators, in trust, to take the rents, issues and profits thereof, and apply the same to the use of my said daughter Anne (paying the same over to her)

for life, and upon her death, to pay over the principal thereof, with all accumulations, to her children and grandchildren, said grandchildren to take per stirpes and not per capita. And in case my said daughter Anne shall die without issue her surviving, then I direct my said trustee to divide the said remaining part of the two equal parts or shares of the balance of my said estate into ten equal parts or shares, which I give, devise and bequeath as follows:

(A) To my sister, Mrs. Rebecca Hamilton, the income for life from one part or share, and at her death the principal is to fall back into this remaining part or share of my estate for divisions as hereinafter provided for.

(B) To my niece, Charlotte E. McLane, daughter of my deceased brother, Charles E. McLane, one part or share.

(C) To my sister, Mrs. Mary Hobbins, two parts or shares.

(D) To my brother, James L. McLane, three parts or shares.

(E) To my nephew, Allan McLane (son of my brother, James L. McLane), one part or share.

(F) To my wife, Abby, two parts or shares; provided, however, that should any of the above-named party or parties in this division of the said remaining part of the two equal shares of the balance of my estate die during the lifetime of my daughter, Anne, then I direct that the share or shares given to him, her, or them, as also the share given for life to my sister, Rebecca Hamilton, shall be divided amongst those who may then survive in the proportions above mentioned.

Sixth. I hereby give my executrix, executor and trustee, the survivor of them, or such of them as shall qualify, full power and authority to mortgage any or all of my real estate or to sell the same either at public or private sale, upon such terms and conditions as they may think best, and for that purpose to execute all proper deeds and instruments of writing.

In witness whereof, I have hereunto set my hand and affixed my seal, this twenty-seventh day of March, A. D. 1888.

ALLAN McLANE. [SEAL]

Signed, sealed, published and declared by the above named testator, Allan McLane, as and for his last will and testament, in our presence, who, in his presence, at his request, and in the presence of each other, have hereto set our names as witnesses.

Feb. 23, '93, 330 4½ st., Washington. WILLIAM A. GORDON.
" 1507 H st. n. w., " CHAS. E. HAGNER.
" 1502 13th st. n. w., " WM. D. BALDWIN.

SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business,
February 23d, 1893.

DISTRICT OF COLUMBIA, *to wit:*

This day appeared William A. Gordon, Charles E. Hagner, and William D. Baldwin, the subscribing witnesses to the foregoing last will and testament of Allen McLane, late of the District of Columbia, deceased, and severally made oath on the Holy Evangels of Almighty God, that they did see the testator therein named sign this will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehension, of sound and disposing mind and capable of executing a valid deed or contract; and that their names as witnesses to the aforesaid will were signed in the presence and at the request of testator, and in the presence of one another.

Test: L. P. WRIGHT,
Register of Wills.

Codicil.

[Filed December 22, 1891.]

I, ALLAN MCLANE, a citizen of the United States of America, residing at 1500 Vermont Avenue, Iowa Circle, in the City of Washington, in the District of Columbia—and at present sojourning at my cottage, known as "Gillian Lodge," at Narragansett Pier, Rhode Island—being of sound mind and disposing memory, do make, publish and declare this codicil (No. 1), to my last will and testament which I executed March 27th, 1888, in the City of Washington, in the District of Columbia, with Wm. A. Gordon, (Dr.) Charles E. Hagner and William D. Baldwin, as witnesses thereto. Whereas, in paragraph "Third" of my aforesaid last will and testament I made a gift and devise with certain provisions there appearing, unto my daughter Anne and her heirs, of my cottage property at Narragansett Pier, Rhode Island, known as "Gillian Lodge," inclusive of the dwelling house and land, and the stable and land, and with all the appurtenances to both belonging: and inclusive also, of all the household furniture in the dwelling house belonging to me, and with all other articles therein belonging to me; therefore, I now make this codicil (No. 1), in order to, and I do hereby revoke the said gift and devise unto my said daughter Anne and her heirs, made in said paragraph "Third" of my aforesaid last will and testament: and further, I do hereby now give and devise all the same and said property referred to, at my death, to my wife Abby and her heirs, the said gift and devise has reference alone to the land (two acres) embraced in my original purchase for "Gillian Lodge" (with the house, stable and other property referred to; but not to any more land, which I may hereafter purchase, adjacent).

In witness whereof, I have hereunto set my hand and seal, this twenty-seventh day of August, in the year of our Lord, eighteen hundred and eighty-eight.

ALLAN MCLANE. [SEAL]

The preceding instrument of one sheet, this being the second page thereof, was at the date thereof, and now here declared to as, by the testator, Allan McLane, to be a codicil (No. 1): to be annexed to his last will and testament—executed March 27th, 1888—and was now here, at the same time, subscribed by the said testator, in the presence of each of us; and we, at his request, and in his presence, and in the presence of each other, sign our names hereto as attesting witnesses.

WM. C. CLARKE, Wakefield, R. I.
JAMES A. ROSE, Narragansett Pier, R. I.
JAMES O. CHANDLER, Narragansett Pier, R. I.

SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphan's Court Business,
June 28th, 1892.

DISTRICT OF COLUMBIA, *to wit*:

This day appeared William C. Clarke, James A. Rose and James O. Chandler, the subscribing witnesses to the aforegoing codicil to the last will and testament of Allan McLane, late of the District of Columbia, deceased, and severally made oath on the Holy Evangels of Almighty God, that they did see the testator therein named sign this codicil; that he published, pronounced and declared the same to be a codicil to his last will and testament; that at the time of so doing he was, to the best of their apprehension, of sound and disposing mind, memory and understanding, and capable of executing a valid deed or contract, and that their names as witnesses to the aforesaid codicil were signed in the presence and at the request of the testator, and in the presence of one another.

Test: L. P. WRIGHT,
Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding an Orphan's Court.

In the matter of the Estate of Allan McLane, deceased.

The petition of James L. McLane and Abby McLane respectfully shows:

They are both citizens of the United States, the petitioner, James L. McLane, residing in the State of Maryland, and the petitioner Abby McLane residing in the District of Columbia.

Allan McLane, late of the District of Columbia, died in said District on the 16th of December, A. D. 1891. The said decedent left a last will and testament and codicil thereto, the former bearing date the 27th day of March, 1888, and the latter bearing date the 27th day of August, 1888, both of which are duly executed according to law.

That by the terms of said will these petitioners are nominated as executor and executrix thereof, without bond.

That, though diligent search hath been made amongst the effects of the decedent, no other paper by way of testamentary disposition of his estate can be found other than those offered for probate.

That the personal estate of the decedent, consisting of money, stocks, bonds, etc., amounts to about the sum of three hundred thousand ($300,000) dollars, and the debts of the decedent's estate are merely nominal.

The decedent left surviving him as his heir-at-law Anne Cropper, and as his widow, the petitioner, Abby K. McLane.

The real estate of the decedent consists of certain lands in the District of Columbia, Narragansett Pier, Rhode Island, and in San Francisco, California.

The petitioners pray that said last will and testament and the said codicil thereto, be admitted to probate and record as the last will and testament and codicil thereto of the said Allan McLane, and that letters testamentary upon his estate be issued to them.

ABBY K. McLANE.
JAMES L. McLANE.

GORDON & GORDON, *Proctors.*

We solemnly swear that we have read the petition by us subscribed and know the contents thereof; that the facts therein stated of our personal knowledge are true, and that the facts therein stated upon information and belief we believe to be true.

ABBY K. McLANE.
JAMES L. McLANE.

Subscribed and sworn to before me this 22d day of December, A. D. 1891.

OSCAR LUCKETT,
Notary Public.

Endorsement and file mark: No. 4743, Doc. 17.—Orphan's Court.—In re estate of Allan McLane, deceased. Petition of James L. McLane and Abby K. McLane. District of Columbia. Filed December 22, 1891.

L. P. WRIGHT,
Register of Wills.

GORDON & GORDON,
Proctors.

Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business. No. 4743. Adm. Doc. 17.

In re estate of Allan McLane, deceased. On petition of James L. McLane and Abby McLane.

The United States of America to Daniel M. Ransdell, U. S. Marshal, D. C.—Greeting:

You are hereby commanded to cite and summon Anne Cropper and John Cropper, her husband, that they appear before a special term for Orphans' Court business, of the Supreme Court of the District of Columbia, to be held at the city of Washington, in and for said District, on Friday, the 22d day of January, A. D., 1892, at one o'clock p. m., to show

cause, if any they have, why the papers offered for probate and record as the last will and testament and codicil thereto, of Allan McLane should not be admitted to probate and record as the last will and testament and codicil thereto of said Allan McLane, and why letters testementary on the estate of the decedent should not issue as prayed.

Witness ——— Justice, holding the Special Term of said Supreme Court for Orphans' Court business this 24th day of December, A. D. 1891.

Teste: A. B. HAGNER.

Teste: L. P. WRIGHT,

Register of Wills for the District of Columbia.

Endorsement and file mark: No. 4743, Doc. 17—In re Estate of Allan McLane, deceased.

Citation *vs.* Anne Cropper and John Cropper, her husband. Issued December 24, 1891. Returned December 30, 1891.

Cited and summoned Anne Cropper and John Cropper, her husband, as within directed, December 30, 1891.

D. M. RANSDELL,

Marshal.

In the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business, the —— day of January, A. D. 1892.

In re Estate of Allan McLane, deceased.

The petitioners respectfully represent—

1. That they have notice that certain paper writings, bearing date the 27th of March, 1888, and 27th of August, 1888, filed in this honorable court on or about the 22d day of December, A. D. 1891, as the last will and testament and codicil thereto, respectively, of Allan McLane, deceased.

2. That these petitioners are Anne Cropper, a daughter and the only surviving child and descendant of said de-

ceased, and John Cropper, her husband; and that the interests of said Anne Cropper will be injuriously affected by the allowance of said alleged will and codicil; wherefore, they pray leave to file this their caveat against said alleged will and codicil, and pray that they may be heard thereon before action is taken by this honorable court.

3. And for grounds of objection against said alleged will and codicil they show that, in their belief, the said paper writings are not the last will and testament and codicil thereto of said deceased. The said paper writings were executed, if at all, under undue influence, importunities, suggestions and persuasions of James L. McLane, a brother of the said deceased, and Abby McLane, the wife of said deceased, and of some other person or persons, and are not the free, voluntary act or acts of said Allan McLane; and the said paper writings were procured by the fraud, misrepresentation and artifice of said James L. McLane and Abby McLane.

Wherefore petitioners pray:

That the said paper writings may be refused probate in this honorable court as the last will and testament and codicil thereto of said deceased.

That plenary proceedings be had hereupon, and that issues may be framed by this honorable court between these petitioners, caveators and the proponents of the said alleged will and codicil, and sent to the Circuit Court to be there tried by a jury.

JOHN CROPPER.
ANNE CROPPER.

BLAIR LEE,
JOHN S. WISE,
Proctors.

DISTRICT OF COLUMBIA, } *to wit:*
City of Washington. }

I, Anne Cropper, petitioner in the above petition, being duly sworn, desposes and says, that she has read the foregoing petition by her subscribed and knows the contents

thereof, that the facts therein stated upon her personal knowledge she knows to be true, and that those therein stated upon information and belief she believes to be true.

ANNE CROPPER.

Subscribed and sworn to be before me this 22d day of January, A. D. 1892. J. ARTHUR LYNHAM,

U. S. Commissioner.

Endorsement and File Mark: No. 4,743, Doc. 17.—Estate of Allan McLane, deceased. Petition of Anne Cropper and John Cropper, under citation of December 24th, A. D. 1891.

District of Columbia—filed January 22, 1892.

L. P. WRIGHT,

Register of Wills.

Blair Lee, John S. Wise, proctors for Anne and John Cropper.

SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Holding a Special Term for Orphans' Court business.

In Matter of Estate of Allan McLane, deceased.

The answer of James L. McLane to the petition of John Cropper and Anne Cropper, filed herein on the 22d day of January, A. D. 1892:

This respondent, for answer to said petition, denies most emphatically that the paper-writings bearing date the 27th day of March, 1888, and the 27th day of August, 1888, and filed as the last will and testament and codicil thereto respectively of Allan McLane, deceased, were executed under the undue influence, importunities, suggestions and persuasions of this respondent, and further he denies most emphatically that said paper writings were procured by fraud, misrepresentation and artifice on his part; and further answering, he says that said paper-writings are the last will

and testament and codicil thereto of said Allan McLane, deceased.

J. L. McLane.

J. Holdsworth Gordon.
Enoch Totten.

I solemnly swear that I have read the answer by me subscribed, and know the contents thereof; and the facts therein stated of my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

J. L. McLane.

Subscribed and sworn to before me this 29th day of January, A. D., 1892.

Lewis I. O'Neal,
Notary Public, D. C.

Endorsement and File Mark: No. 4,743, Doc. 17.—Estate of Allan McLane. Answer of James L. McLane to petition for caveat.

In the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court business.

In the matter of Estate of Allan McLane, deceased.

The answer of Abby K. McLane to the petition of John Cropper and Anne Cropper filed herein on the 22d day of January, A. D., 1892.

This respondent for answer to said petition denies most emphatically that the paper writings bearing date the 27th day of March, 1888, and the 27th day of August, 1888, and filed as the last will and testament and codicil thereto, respectively, of Allan McLane, deceased, were executed under the undue influence, importunities, suggestions and persuasions of this respondent; and, further, she denies most emphatically that said paper writings were procured by fraud, misrepresentation and artifice on her part; and further

answering she says that said paper-writings are the last will and testament and codicil thereto of said Allan McLane, deceased.

ABBY K. McLANE.

ENOCH TOTTEN,
J. HOLDSWORTH GORDON,
Proctors.

I solemnly swear that I have read the answer by me subscribed, and know the contents thereof; that the facts therein stated of my personal knowledge are true; and that the facts therein stated upon information and belief I believe to be true.

ABBY K. McLANE.

Subscribed and sworn to before me this 27th day of January, A. D. 1892.

LEWIS I. O'NEAL,
Notary Public, D. C.

Endorsement and file mark:

No. 4,743, Doc. 17.—Orphans' Court.

In matter of estate of Allan McLane, deceased.

Answer of the respondent, Abby K. McLane, to petition filed by John Cropper and Anne Cropper.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Court for Probate Business.

In re Estate of Allan McLane:

On motion of the solicitors of the propounders of the will in the above matter, it is, this 5th day of February, 1892, ordered, that the caveators present their issues to this court for consideration on Friday, the 19th day of February, at the opening of the court on that day.

It is further ordered, that the said caveators serve a copy of their proposed issues upon the counsel for the said propounders on or before Thursday, the 18th day of February, 1892.

A. B. HAGNER.

Endorsement and file mark: No. 4743, Doc. 17. In re estate of Allan McLane, deceased.

Order fixing time for the caveators to present their issues to the court.

SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of Allan McLane, deceased.

Upon the petition of the caveators, John and Anne Cropper, it is this 19th day of February, 1892, ordered that the following issues be, and they hereby are sent to the Circuit Court to be tried by a jury, to wit:

I. Was the paper writing bearing date the 27th day of March, 1888, offered as the last will and testament of Allan McLane, and the paper writing bearing date of 27th day of August, 1888, offered as a codicil to said last will and testament, and if either of them, which, procured by the fraud, misrepresentation or artifice of Abby K. McLane and of James L. McLane, or of either of them, or of any other person or persons.

II. Were the paper writings offered as the last will and testament of the said Allan McLane and the codicil thereto, or was either of them, and if either of them, which, executed under the undue influence, importunities, suggestions or persuasions of the said Abby K. McLane and James L. McLane, or of either of them, or of any other person or persons.

A. B. HAGNER.

Proceedings before the Supreme Court of the District of Columbia, holding a special term and Circuit Court in and for said District, commencing the first Tuesday, it being 5th day of April, A. D. 1892.

TUESDAY, April 5th, A. D. 1892.

By order of Martin V. Montgomery, Justice, one of the justices of said Supreme Court presiding, the court is opened by proclamation of the marshal, pursuant to Rule of Court.

MONDAY, June 27th, A. D. 1892.

Session resumed pursuant to adjournment. Montgomery, Justice, presiding.

In the Matter of the Estate of ALLAN McLANE, *deceased.* } At Law. No. 32,651.

Now comes here the caveators by their attorneys, Messrs. Wilson, Wise and Lee, as well the caveatees by her attorneys, Messrs. Totten, Carter and Gordon & Gordon, and a jury of good and lawful men of this District, to wit: William B. Durkhorst, Henry T. Miller, Spencer Murray, Carter Patten, John E. Semmes, Richard D. Somerville, George C. Thompson, Alexander Campbell, Andrew W. Eastlack, Frederick Fairfax, Franklin V. Killian and John T. Pyles, who, being duly sworn to try and true answers make to the issues sent here by the Orphans' branch of this court for trial by jury, after hearing part of the evidence are respited until the meeting of the court tomorrow morning.

TUESDAY, June 28th, A. D. 1892.

Session resumed pursuant to adjournment, Montgomery, Justice, presiding.

In the Matter of the Estate of ALLAN McLANE, *deceased.* } At Law. No. 32,651. Cal. 849.

Now, again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after a further hearing of the evidence are again respited until the meeting of the court tomorrow morning.

WEDNESDAY, June 29th, A. D. 1892.

Session resumed pursuant to adjournment, Montgom ery Justice, presiding.

In the Matter of the Estate of ALLAN McLANE, *deceased.* } At Law. No. 32,655. Cal. 849.

Now again come here the parties aforesaid in manner aforesaid, and the same jury that was respited yesterday,

who, after a further hearing of the evidence are again respited until the meeting of the court to morrow morning.

THURSDAY, June 30th, A. D. 1892.

Session resumed pursuant to adjournment, Montgomery, Justice presiding.

In the Matter of the Estate of ALLAN McLANE, *deceased.* } At Law. No. 32,651. Cal. 849.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited yesterday, who, after a further hearing of the evidence are again respited until the meeting of the court tomorrow morning.

FRIDAY, July 1st, A. D. 1892.

Session resumed pursuant to adjournment, Montgomery, Justice, presiding.

In the matter of the Estate of ALLAN McLANE, *deceased.* } At Law. No. 32,651. Cal. 849.

Now again come here the parties aforesaid in manner aforesaid, and the same jury that was respited yesterday, who, after a further hearing of the case are again respited until the meeting of the court on Tuesday morning next.

TUESDAY, July 5th, A. D. 1892.

Session resumed pursuant to adjournment, Montgomery, Justice, presiding.

In the matter of the Estate of ALLAN McLANE, *deceased.* } At Law. No. 32,651.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited on Friday last, who, after the case is given them in charge, on their oath say in answer to the first issue: Was the paper writing bearing date the 27th day of March, 1888, offered as the last will and testament of Allan McLane, and the paper

writing bearing date the 27th day of August, 1888, offered as a codicil to said last will and testament, and if either of them, which, procured by the fraud, misrepresentation or artifice of Abby K. McLane, and of James L. McLane or of either of them or of any other person or persons? They answer, no. In answer to the second issue: Were the paper writings offered as the last will and testament of the said Allan McLane and as the codicil thereto, or was either of them, and if either of them, which, executed under the undue influence, importunities, suggestions or persuasions of the said Abby K. McLane and James L. McLane, or either of them, or of any other person or persons? They answer, no. And the court orders the clerk to certify said answers to the branch of the court from which said issues came.

[Filed July 8, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In the Matter of the Estate of ALLAN McLANE, *deceased*. } At Law, No. 32,651.

Now comes the caveators in the above entitled case and move the court to set aside the verdict heretofore rendered herein, and to grant a new trial and for grounds for their motion say:

1st. That the said verdict is contrary to the evidence.

2d. That upon the evidence adduced by the caveators the verdict should have been for the caveators on each of the several issues submitted.

3d. Because of error of the court in sustaining the motion of the caveatees to direct the jury upon the evidence adduced at the trial by the caveators, to return a verdict for the caveatees on the said several issues submitted.

4th. Because of error of the court in directing the jury upon the evidence adduced by the caveators to return a verdict in favor of the caveatees on the several issues submitted.

5th. Because of error of the court in this, to wit: That the court deprived the caveators of the verdict of the jury upon the facts adduced in evidence and substituted the judgment of the court upon the evidence for the judgment and verdict of the jury.

6th. Because of error of the court in ruling upon the admissibility of evidence over the objection of the caveators noted at the trial.

SHELLABAGER & WILSON,
BLAIR LEE.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FRIDAY, July 8th, A. D. 1892.

Session resumed pursuant to adjournment, Montgomery, Justice, presiding.

In the Matter of the Estate of ALLAN McLANE, *deceased.* } At Law. No. 32,651.

Upon hearing the caveator's motion for a new trial, and after argument of counsel on both sides, it is considered that said motion be and the same is hereby overruled. Appeal noted and amount of bond fixed at $500.

UNDERTAKING FOR APPEAL BY CAVEATORS.

[Filed July 14, 1892.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

the 14th day of July, A. D., 1892.

In the Matter of the Estate of ALLAN McLANE, *deceased.* } At Law. No. 32,651.

The plaintiffs, caveators herein, having appealed to the General Term from the judgment pronounced against them by the Circuit Court on the 8th day of July, A. D. 1892, for themselves and each of them, their and each of their heirs, executors and administrators, appearing and submit-

ting to the jurisdiction of the said General Term, hereby undertake to abide by, perform and pay its judgment, which they agree may be pronounced against all of them.

In the presence of

Katherine C. Cropper. ANNE CROPPER, *Appellant.* [SEAL]

As to Anne and

John Cropper. JOHN CROPPER, *Appellant.* [SEAL]

Approved July 14, '92.

M. V. MONTGOMERY, *Justice.*

TUESDAY, January 3rd, 1893.

Proceedings before the Supreme Court of the District of Columbia, sitting in General Term, beginning the first Tuesday, January 3rd, 1893. Present, Chief Justice Bingham and Justices Hagner and Cox.

WEDNESDAY, January 4th, 1893.

Session resumed pursuant to adjournment. Present, Chief Justice Bingham and Justices Hagner and Cox.

In the Matter of the Estate of ALLAN McLANE. } 4743. Orphans' Court, Cal. 139.

Record read and commented on by Blair Lee for caveators, appellants, and is followed by J. Holdsworth Gordon for caveatees, appellees, reading testimony in their behalf until hour of adjournment.

THURSDAY, January 5th, 1893.

Session resumed pursuant to adjournment. Present, Chief Justice Bingham and Justices Hagner and Cox.

In the Matter of the Estate of ALLAN McLANE, *dec'd.* } 4347. Orphans' Court. Cal. 139.

Argued behalf of caveators by Blair Lee, and is followed by Bernard Carter on behalf of caveatees and Enoch Totten on same behalf, and by Jeremiah M. Wilson in conclusion behalf of the caveators and cause thereon submitted.

MONDAY, January 30th, 1893.

Session resumed pursuant to adjournment.

Present: Chief Justice Bingham and Justices Hagner, Cox and Bradley.

In the Matter of the Estate of ALLAN McLANE, *dec'd.* } 32,651. Law.

Because it appears to the court here that there is no error in the record and proceedings, and in the judgment of the special term, it is therefore here considered that the said judgment be and hereby is affirmed, with costs in favor of the appellee's, caveatees, and that they do have and recover of appellant's, caveators, their proper costs and have execution therefor.

PROCEEDINGS IN THE ORPHANS' COURT OF THE DISTRICT OF COLUMBIA.

Copy of Answer to Issues; Motion for New Trial; Order Overruling said Motion, and Order of General Term affirming Judgment filed in the Orphans' Court Feb'y 20, 1893.

TUESDAY, July 5th, A. D. 1892.

Session resumed pursuant to adjournment, Montgomery, Justice, presiding.

In the Matter of the Estate of ALLAN McLANE, *dec'd*, defendant. } At Law. No. 32,651.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited on Friday last who, after the case is given them in charge, on their oath say in answer to the first issue: Was the paper writing bearing date the 27th day of March, 1888, offered as the last will and testament of Allan McLane, and the paper writing hearing date the 27th day of August, 1888, offered as a codicil to said last will and testament, and if either of them, which, procured by the fraud, misrepresentation or artifice of Abby K. McLane and

of James L. McLane, or of either of them, or of any other person or persons? They answer, No. In answer to the second issue: Were the paper writings offered as the last will and testament of the said Allan McLane and as the codicil thereto, or was either of them, and if either of them, which executed under the undue influence, importunities, suggestions or persuasions of the said Abby K. McLane and James L. McLane, or of either of them, or of any other person or persons? They answer, No. And the court orders the clerk to certify said answers to the branch of the court from which said issues came.

True copy of finding of the jury. Minutes 27, page 127.

Test: J. R. YOUNG,

[SEAL.] *Clerk.*

[Filed July 8, 1892. J. R. Young, Clerk.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In the Matter of the Estate of ALLAN McLANE, *deceased.* } At Law. No. 32,651

Now come the caveators in the above-entitled case and move the court to set aside the verdict heretofore rendered herein, and to grant a new trial, and for grounds for their motion, say:

1st. That the said verdict is contrary to the evidence.

2nd. That upon the evidence adduced by the caveators, the verdict should have been for the caveators on each of the several issues submitted.

3rd. Because of error of the court in sustaining the motion of the caveatees to direct the jury, upon the evidence adduced at the trial by the caveators, to return a verdict for the caveatees on the said several issues submitted.

4th. Because of error of the court in directing the jury, upon the evidence adduced by the caveators, to return a verdict in favor of the caveatees on the several issues submitted.

5th. Because of error of the court in this, to wit: That the court deprived the caveators of the verdict of the jury upon the facts adduced in evidence, and substituted the judgment of the court upon the evidence for the judgment and verdict of the jury.

6th. Because of error of the court in ruling upon the admissibility of evidence over the objection of the caveators noted at the trial.

SHELLABARGER & WILSON.
BLAIR LEE.

July 8th, 1892.

True copy. Test:
JOHN R. YOUNG,
[SEAL.] ——— *Clerk.*

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA
FRIDAY, July 8th, A. D. 1892.

Session resumed pursuant to adjournment, Montgomery, Justice, presiding.

In the Matter of the Estate of ALLAN MCLANE, *deceased.* } At Law. No. 32,651.

Upon hearing the caveators' motion for a new trial, and after argument of counsel on both sides, it is considered that said motion be, and the same is hereby overruled. Appeal noted, and amount of bond fixed at five hundred dollars.

A true copy. Test:
J. R. YOUNG,
[SEAL] ——— *Clerk.*

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
In General Term.
MONDAY, January 30th, 1893.

In the Matter of the Estate of ALLAN MCLANE, *deceased.* } 32,651. Law. Cal. 129.

Because it appears to the court here that there is no error in the record and proceeding or in the judgment of the special term, it is, therefore, here considered that the said judgment be, and hereby is affirmed, with costs in favor of the appellees, caveatees, and that they do have and recover of ap-

pellants, caveators, their proper costs, and have execution therefor.

I hereby certify that the foregoing is a true copy from the minutes of the Court in General Term.

[SEAL] J. R. YOUNG, *Clerk.*

[MEM.: *Up to this point the Records in Nos. 991 and 992 are the same. Here the proceedings in the probate branch of the court begin.*

The writ of error, bond, etc., in 991, in the original, come in here, but in these extracts they will be found at the end.]

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,
Holding an Orphans' Court for said District.

In Matter of Estate of Allan McLane, deceased.

The above entitled matter coming on to be heard on the petition of James L. McLane and Abby K. McLane for the probate of the paper writings bearing date on the twenty-seventh day of March A. D. 1888, and on the twenty-seventh day of August A. D. 1888, respectively, as the last will and testament and codicil thereto of Allan McLane, deceased, and for the issuance of letters testamentary upon the estate of said Allan McLane, to the petitioners, as executor and executrix named in said will, and the verdict of the jury of the Circuit Court on the issues heretofore sent for trial at law having been found in favor of said last will and testament and codicil thereto; and said verdict, with the order of the Circuit Court overruling the motion for a new trial on said issues, and the judgment of the General Term of this court affirming said order of said Circuit Court, having been certified to this court, and said paper writings having been fully proved by the subscribing witness thereto, it is, this 23rd day of February, A. D. 1893, upon the motion of the parties and in presence of counsel for caveators, ordered, adjudged, and decreed that said paper writings be, and the same are, hereby admitted to probate

and record as the last will and testament and codicil thereto of Allan McLane, deceased. And it is further ordered, adjudged, and decreed that letters testamentary upon the estate of said Allan McLane, deceased, do issue unto the said James L. McLane and Abby K. McLane, upon their giving bond in the penal sum of $3,000, conditioned for the faithful performance of their duties as executor and executrix.

And it is further ordered, adjudged, and decreed that James L. McLane and Blair Lee, heretofore appointed collectors ad colligendum of the personal estate of said Allan McLane, account unto this court of and concerning the said trust on or before the 3rd day of March, 1893, and that they immediately, or as soon as said executor and executrix shall have qualified, deliver on demand all the goods, chattels, and personal property in their possession or under their control as such collectors unto the said executor and executrix hereinbefore named.

A. B. HAGNER.

BOND FOR WRIT OF ERROR.

[Filed May 18, 1893.]

In the Supreme Court of the District of Columbia,
the ——— day of———, 1893.

ANNE CROPPER AND JOHN CROPPER } No. 4743.
vs. } Doc. 17.
ABBY K. McLANE AND JAMES L. McLANE. } Orphans' Court.

Know all men by these presents, that we, Anne Cropper John Cropper and Rebecca Minor, are bound unto the above named Abby K. McLane and James L. McLane in the sum of five hundred dollars to be paid to the said Abby K. McLane and James L. McLane or their executors or administrators. To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally and our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals and dated this 18th day of May, A. D. 1893.

Whereas, the above named Anne Cropper and John Cropper have prosecuted their Writ of Error from the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said Supreme Court of the District of Columbia.

Now, therefore, the condition of this obligation is such, that if the above named Anne Cropper and John Cropper shall prosecute their said writ to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

Sealed and delivered in presence of Henrietta Sacks.

ANNE CROPPER. [SEAL]
JOHN CROPPER. [SEAL]
REBECCA MINOR. [SEAL]

Approved the 18th day of May, 1893.

E. F. BINGHAM,
Chief Justice. S. C. D. C.

WRIT OF ERROR.

UNITED STATES OF AMERICA, ss.

To the President of the United States, to the Honorable Chief Justice and Associate Justices of the Supreme Court of the District of Columbia—Greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, in the matter of the estate of Allan McLane, deceased, the parties thereto being James L. McLane and Abby K. McLane, propounders of certain paper writings purporting to be the last will and testament and codicil thereto, of said Allan McLane, deceased, and Anne Cropper and John Cropper, a manifest error hath happened to the great damage of the said Anne Cropper and John Cropper, as by their complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done in the matter aforesaid in this behalf: Therefore, you are hereby commanded, if judgment be

therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within thirty days from the date hereof, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 18th day of May, in the year of our Lord, 1893, and of the *the* independence of the United States, the one hundredth and seventeenth.

[Seal of the Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk of the Supreme Court of the District of Columbia.

CITATION TO THE SUPREME COURT OF THE UNITED STATES.

The United States of America—Greeting:

To Abby K. McLane and James L. McLane:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the District of Columbia, wherein Anne Cropper and John Cropper are plaintiffs and you are defendants, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness, Edward F. Bingham, Chief Justice of the said Supreme Court of the District of Columbia, in the year of our Lord one thousand eight hundred and ninety-three.

E. F. BINGHAM,
Chief Justice.

May 18, 1893.

Service of the above citation accepted this nineteenth day

of May, in the year of our Lord one thousand eight hundred and ninety-three.

GORDON & GORDON and
ENOCH TOTTEN,
Attorneys for Abby K. McLane and James L. McLane.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

UNITED STATES OF AMERICA,
District of Columbia, ss.

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, do hereby certify that the foregoing pages numbered from 1 to 527, both inclusive, to be a full, true and correct transcript of the record of all the proceedings had in said court, in the matter of the estate of Allan McLane, deceased, wherein Anne Cropper and John Cropper were caveators, and James L. McLane and Abby K. McLane caveatees, as the same remains upon the files and records of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 8th day of August, A. D. 1893.

[Seal of the Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Supreme Court of the United States

OCTOBER TERM, 1893.

No. 991.

ANNE CROPPER AND JOHN CROPPER, *Plaintiffs in Error,*
vs.
ABBY K. McLANE and JAMES L. McLANE.

EXTRACTS FROM RECORD IN 991.

BOND FOR WRIT OF ERROR.

[Filed May 18, 1893.]

In the Supreme Court of the District of Columbia, the — day of ———, 1893.

ANNE CROPPER AND JOHN CROPPER
vs.
ABBY K. McLANE AND JAMES L. McLANE. } No. 32,651.

Know all men by these presents, that we, Anne Cropper, John Cropper, and Rebecca Minor, are bound unto the above-named Abby K. McLane and James L. McLane in the sum of $500, to be paid to the said Abby K. McLane and James L. McLane, or their executors or administrators. To which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 18th day of May, A. D. 1893.

Whereas the above named Anne Cropper and John Cropper have prosecuted their writ of error from the Supreme Court of the United States to reverse the judgment

rendered in the above suit by the said Supreme Court of the District of Columbia, now, therefore, the condition of this obligation is such, that if the above named Anne Cropper and John Cropper shall prosecute their said writ to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

ANNE CROPPER. [SEAL]
JOHN CROPPER. [SEAL]
REBECCA MINOR. [SEAL]

Sealed and delivered in presence of Henrietta Sacks.
Approved the 18th day of May, 1893.

E. F. BINGHAM, *C. J.*,
Justice S. C. D. C.

WRIT OF ERROR.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the Honorable Chief Justice and Associate Justices of the Supreme Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, in the matter of the estate of Allan McLane, deceased, the parties thereto being James L. McLane and Abby K. McLane, propounders of certain paper writings purporting to be the last will and testament and codicil thereto, of said Allan McLane, deceased, and Anne Cropper and John Cropper, a manifest error hath happened, to the great damage of the said Anne Cropper and John Cropper, as by their complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done in the matter aforesaid in this behalf: Therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things

concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within thirty days from the date hereof, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 18th day of May, in the year of our Lord, 1893, and of the independence of the United States the one hundred and seventeenth.

[Seal of the Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk of the Supreme Court
of the District of Columbia.

CITATION TO THE SUPREME COURT OF THE UNITED STATES.

The United States of America—Greeting:

To Abby K. McLane and James L. McLane.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a Writ of Error filed in the Clerk's office of the Supreme Court af the District of Columbia, wherein Anne Cropper and John Cropper are plaintiffs and you are defendants, to show cause, if any there be, why the judgment in the said Writ of Error mentioned, should not be corrected so that speedy justice be done the parties in that behalf.

Witness, Edward F. Bingham, Chief Justice of the said Supreme Court of the District of Columbia, in the year of our Lord, one thousand eight hundred and ninety-three.

E. F. BINGHAM,
Chief Justice.

May 18, 1893.

Service of the above citation accepted this nineteenth day of May, in the year of our Lord, one thousand eight hundred and ninety-three.

GORDON & GORDON and
ENOCH TOTTEN,
Attorneys for Abby K. McLane and James L. McLane.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

UNITED STATES OF AMERICA,
District of Columbia, ss.

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, do hereby certify the foregoing pages numbered from 1 to 521, both inclusive, to be a full, true and correct transcript of the record of all the proceedings had in said court, in the matter of the estate of Allan McLane, deceased, wherein Anne Cropper and John Cropper were caveators, and James L. McLane and Abby K. McLane were caveatees, as the same remains upon the files and records of said court, up to and including the order of said court in General Term, affirming the verdict of the jury sustaining the last will and testament of said Allan McLane, deceased.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court, this 8th day of August, A. D. 1893.

[Seal of the Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Office Supreme Court U. S.
FILED.
JAN 10 1894
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

ANNIE CROPPER AND JOHN CROPPER,
Plaintiffs in Error,
vs.
ABBEY K. McLANE AND JAMES L. McLANE.

Nos. ~~991 and 992~~ 261 & 262.

BRIEF IN SUPPORT OF MOTIONS TO DISMISS.

ENOCH TOTTEN.
J. HOLDSWORTH GORDON.

Law Reporter Print, 518 Fifth St.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

ANNIE CROPPER AND JOHN CROPPER,
Plaintiffs in Error,
vs.
ABBEY K. McLANE AND JAMES L. McLANE.
} No. 991.

And now come the defendants in error and move the court to dismiss the writ of error herein, and for ground for said motion say that the judgment brought up by said writ is not a final judgment.

ENOCH TOTTEN.
J. HOLDSWORTH GORDON.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

ANNIE CROPPER AND JOHN CROPPER,
Plaintiffs in Error,
vs.
ABBEY K. McLANE AND JAMES L. McLANE.
} No. 992.

And now come the defendants in error and move the court to dismiss the writ of error herein, and for ground for said motion say that this court has no jurisdiction to review a judgment of the Special Term of the Supreme Court of the District of Columbia.

ENOCH TOTTEN.
J. HOLDSWORTH GORDON.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

ANNIE CROPPER AND JOHN CROPPER,
Plaintiffs in Error,
vs.
ABBEY K. MCLANE AND JAMES L. MCLANE.

Nos. 991 and 992.

BRIEF IN SUPPORT OF MOTIONS TO DISMISS.

These two causes arise out of a controversy over the will of Allan McLane, deceased, and there is a motion to dismiss in each. The writ of error in one brings up a judgment of the Special Term of the Supreme Court of the District of Columbia, directing letters testamentary to be issued upon the will; the second is directed to a judgment of the Supreme Court of the District of Columbia in General Term, affirming the judgment of the special term or Circuit Court, denying a motion to set aside a verdict sustaining the same will.

STATEMENT OF FACTS.

Allan McLane died in the city of Washington, D. C., December 16, 1891, leaving a will bearing date March 27, 1888, to which a codicil was made, dated August 27, 1888.

On the 22d of December, 1891, a petition for letters testamentary was filed by Abbey K. McLane and James L. McLane, who were named as executors in the will. Soon afterwards, and on the 22d of January, 1892, a caveat was filed against the probate of the will by Annie Cropper, daughter of the testator and sole heir-at-law, and John Cropper, her husband.

On the 19th day of February, 1892, issues were framed by the Special Term of the Supreme Court of the District of Columbia, holding a session of that court for probate business, and sent to the Circuit Court to be tried by a jury. The charges made against the will, and which were submitted for the decision of the jury, were that the said will was procured by the fraud, misrepresentation or artifice of the defendants in error, and that the will was the result of undue influence, importunities, suggestions or persuasions of the said defendants. These issues were tried before a jury in the Circuit Court, and resulted in a verdict, July 5, 1892, sustaining the will. When the caveators closed their evidence, agreeably to the practice prevailing in the court, a claim was made by counsel for the caveatees, that there was really no evidence which supported the charges made by the caveators, and that the court ought to instruct the jury that they should render a verdict in favor of the caveatees. The court was of that opinion, and so directed the jury. This verdict was, therefore, rendered by the jury in obedience to the instructions of the court.

On the 8th of July following, a motion for a new trial was filed by the caveators, which motion was overruled on the same day. From that order an appeal was taken to the general term of that court. On the 30th day of January, 1893, the general term, after argument, affirmed the judgment of the special term, denying the motion for a new trial. To this judgment a writ of error was issued and the cause brought here. This is cause No. 991.

After the judgment above mentioned had been rendered by the general term, a certificate was sent to the probate branch of the Supreme Court of the District, showing the result of the trial of the issues, the motion for a new trial and the order denying the same, together with a copy of the judgment of the general term, affirming the judgment and denying the motion for a new trial.

Upon the presentation of this evidence, the special term

having charge of probate business, and upon the petition, before filed, of the defendants in error, entered a judgment admitting the will to probate and directing that letters testamentary be issued to the defendants in error in pursuance of the terms of the will. This judgment, directing letters testamentary to issue, was made on the 23d day of February, 1893, and it has been brought up to this court, by the writ of error in cause No. 992.

The court may have difficulty in determining to what particular judgment either of the writs of error was directed; but it is assumed here for the purposes of the argument that one of the writs of error was directed to the judgment of the special term, issuing letters testamentary, and that the other was directed to the judgment of the general term, affirming the action of the Circuit Court. There is nothing in the citation or writ of error in either case to distinctly point out the judgment which it was intended to bring up.

The questions now raised are as follows:

1. In cause No. 992, which is the case brought up directly from the special term, it is submitted that there is no jurisdiction in this court to review a judgment of the special term of the Supreme Court of the District of Columbia holding a court for probate business.

2. In the other case, No. 991, we say: This court has no jurisdiction to review that judgment because the judgment is not final.

POINTS AND AUTHORITIES.

(Cause No. 992.)

First. This court has no jurisdiction to review the judgments or decrees of the special terms of the Supreme Court of the District of Columbia. The only appellate jurisdiction over such judgments or decrees was vested by law in the general term of that court. This was done by the provisions of Section 772 of the Revised Statutes relating to

the District of Columbia. By the provisions of that section the plaintiffs in error had the right of appeal, from the judgment complained of, to the general term. This judgment was entered February 23, 1893, and under the rules (R. 89) of the Supreme Court of the District of Columbia any party had the right to appeal within twenty days from the date of the judgment or decree. The Act of Congress, approved February 9, 1893, establishing the Court of Appeals of the District of Columbia, and which deprived the general term of appellate jurisdiction, did not take effect until April 3, 1893, and, therefore, the plaintiffs in error had ample time, had they chosen so to do, to take their appeal to the general term. They did not do this, but for some reason, best known to themselves, have undertaken to bring the judgment, by a short cut, directly into this court for review. This can not be done.

The Act of Congress, approved June 21, 1870 (16 Stat., 160), relating to the Supreme Court of the District of Columbia, has some bearing on the question of the appellate power of this court in relation to decrees of the special term in probate matters, and may aid the court in its deliberations. The first section of that act provides—

> "That the several general terms and special terms of the circuit courts, district courts, and criminal courts authorized by the Act approved March third, eighteen hundred and sixty-three, entitled, 'An Act to reorganize the courts of the District of Columbia, and for other purposes,' which have been or may be held, shall be and are declared to be, severally, terms of the Supreme Court of the District of Columbia; and the judgments, decrees, sentences, orders, proceedings and acts of said general terms, special terms, circuit courts, district courts, and criminal courts heretofore or hereafter rendered, made or had, shall be deemed judgments, decrees, sentences, orders, proceedings, and acts of said Supreme Court: Provided, That nothing herein contained shall affect the right of appeal as provided by law."

The fourth section provides that—

> "All the powers and jurisdiction by law now held and exercised by the Orphan's Court of Washington County, in the District of Columbia, shall hereafter be held and exercised by the justice holding the special term of the said Supreme Court for that purpose, subject always to the same provisions as are contained in the fifth section of the Act of Congress, entitled 'An act to reorganize the courts in the District of Columbia and for other purposes,' approved March third, eighteen hundred and sixty-three."

The fifth section provides—

> "That the Orphans' Court of Washington County, District of Columbia, be, and the same is hereby, abolished; and all laws and parts of laws, relating to said Orphans' Court, so far as the same are applicable to said Supreme Court, are hereby continued in force, in respect to said Supreme Court; and all other laws, and parts of laws, relating to said Orphans' Court, are hereby repealed."

These provisions put the orders relating to testamentary business, made by the special term, on the same footing with the orders relating to the general chancery business, and hence, the right of appeal was solely to the general term. The writ of error in this case (No. 991) ought to be dismissed.

(Cause No. 991.)

Second. The judgment in the other cause is not reviewable here because it is not a *final* judgment. The judgment of the special term appealed to the general term was a judgment overruling a motion for a new trial, made for various reasons mentioned in the motion. (19.) The general term affirmed this judgment and that judgment of the general term has been brought here by writ of error for review. This judgment of the special term amounts to no

more than a judgment directing a fact, (that the jury had sustained the will), to be certified to the branch of the court having jurisdiction of probate matters. The judgment of the special term, at the time of the verdict, did actually direct the clerk to so certify. (19). Such a judgment is not final and it has been so settled by this court by repeated decisions.

Van Ness *vs.* Van Ness, 6 How., 62.
Brown *vs.* Wiley, 4 Wall., 165.
Ormsby *vs.* Webb, 134 U. S., 47.

In the case of Van Ness *vs.* Van Ness, the attempt was made to bring the cause into this court by means of a writ of error for review of the proceedings of the law court which tried the issues sent out by the Orphans' Court; in Brown *vs.* Wylie the writ of error was sued out to bring up for review the *order* of the general term affirming the proceedings of the law courts which tried such issues. Both of these writs were dismissed, because the order, judgment or decision as to which error was alleged, was not *final*. These two decisions were approved in the recent case of Ormsby *vs.* Webb. In this last case the whole question was elaborately reviewed by Mr. Justice Harlan in an able opinion.

The motion to dismiss the writ of error should be allowed in each case.

Enoch Totten.
J. Holdsworth Gordon.

Office Supreme Court U. S.
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FEB 1 1894
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1893.

Nos. 991 and 992.

ANNE CROPPER and JOHN CROPPER,
Plaintiffs in Error,

vs.

ABBY K. McLANE and JAMES L. McLANE.

Brief of Plaintiffs in Error in Opposition to Motion to Dismiss Writs of Error.

JEREMIAH M. WILSON,
BLAIR LEE,
For Plaintiffs in Error.

McQUEEN, PR.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

ANNE CROPPER and JOHN CROPPER,
Plaintiffs in error,
vs.
ABBY K. McLANE and JAMES L. McLANE.

Nos. 991 and 992.

Brief of Plaintiffs in Error in Opposition to Motion to Dismiss Writs of Error.

STATEMENT OF FACTS.

The Special Term of the Supreme Court of the District of Columbia, holding a session for Orphans' Court business, in the matter of the Estate of Allan McLane, deceased, framed issues, upon the paper offered for probate, involving the question of will or no will, February 16th, 1892.

These issues were tried by the Circuit Court of the District of Columbia, being a Special Term of the same tribunal for the trial of civil cases by jury. There a verdict was directed by the court in favor of the caveatees, defendants in error. By means of a motion for a new trial this action and other alleged errors of the Special Term were taken on appeal to the General Term of the Supreme Court of the District of Columbia, which approved the findings below.

The proceedings on the issues on the part of the said several terms are set forth in their minutes, respectively, as follows:

[Proceedings, Supreme Court of the District of Columbia holding a Special Term and Circuit Court, Vol. 27, page 127.]

TUESDAY, *July 5th, 1892.*

Session resumed pursuant to adjournment, Montgomery, Justice, presiding.

* * * *

In the Matter of the Estate of ALLAN McLANE, deceased. } At Law, No. 32,651.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited on Friday last, who after the case is given them in charge, on their oath, say in answer to the first issue: Was the paper writing bearing date the 27th day of March, 1888, offered as the last will and testament of Allan McLane, and the paper writing bearing date the 27th day of August, 1888, offered as a codicil to said last will and testament, and if either of them, which, procured by the fraud, misrepresentation or artifice of Abby K. McLane, and of James L. McLane or of either of them, or of any other person or persons? They answer No. In answer to the Second Issue: Were the paper writings offered as the last will and testament of the said Allan McLane, and as the codicil thereto, or was either of them, and if either of them, which, executed under the undue influence, importunities, suggestions or persuasions of the said Abby K. McLane and James L. McLane, or of either of them, or of any other person or persons? They answer No. And the court orders the clerk to certify said answers to the branch of the court from which said issues came.

(The "case and bill of exceptions" duly sealed and signed by the presiding justice, on the 8th day of August, A. D. 1892, show the above verdict to have been rendered by the direction of the court.)

FRIDAY, *July 8th, A. D. 1892.*

Session resumed pursuant to adjournment, Montgomery, Justice, presiding.

* * * * * *

In the Matter of the Estate of ALLAN McLANE, Deceased. } At Law, No. 32,651.

Upon hearing the caveator's motion for a new trial and after argument of counsel on both sides, it is considered that said motion be, and the same is hereby, overruled. Appeal noted and amount of bond fixed at five hundred dollars.

* * * * * *

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.
IN GENERAL TERM.

In the Matter of the Estate of ALLAN McLANE, deceased, } 32,651, Law. Cal. 139.

Because it appears to the Court here that there is no error in the record and proceeding or in THE JUDGMENT of the Special Term, it is therefore here considered that the SAID JUDGMENT be, and hereby is, affirmed, with costs in favor of the appellees, caveatees, and that they do have and recover of appellants, caveators, their proper costs and have execution therefor.

These proceedings were certified to the Special Term for Orphans' Court business, and, as in view of the statutes and decisions hereinafter referred to, all of these terms are but one tribunal, this was done only for the convenience of the justice acting in the latter term and the general policy of keeping separate records of probate matters.

The Special Term for Orphans' Court business then passed a further order admitting the will to probate and directing that letters testamentary be issued, etc., February 23d, 1893.

Points and Authorities.

CAUSE No. 992.

(Writ of error to judgment of Special Term for Orphans' Court business, admitting will to probate, etc.—The numbers of the cases having been inverted in the brief in support of motion to dismiss, that order is followed here.)

It is asserted in support of the motion to dismiss this writ that the order of the Special Term for Orphans' Court business, admitting will to probate, etc., is not a *final* judgment. The following reasons are submitted to the contrary —

1. There was no right of appeal to the General Term from the action of that Special Term, taken in conformity with a prior order of the General Term.

The statute governing the right of appeal from the Special Term to the General Term is as follows (Revised Statute District of Columbia, Sec. 772):

"Any party aggrieved by any order, judgment, or decree, made or pronounced at any special term, may, if the same involve the merits of the action or proceeding, appeal therefrom to the general term of the Supreme Court, and upon such appeal the general term shall review such order, judgment, or decree, and affirm, reverse, or modify the same, as shall be just."

The judgment appealed from must involve *the merits of the action*, and is to be *reviewed* * * * affirmed, reversed or modified "as shall be just."

The *merits* of this cause had been determined by the Special Term as a Circuit Court, and had been already reviewed and affirmed by the General Term, whereby they were finally disposed of and all the *review* possible there had been secured. The action by the Special Term for Orphans' Court business, in admitting to probate, etc.,

was in conformity with the order of the General Term. The merits had been exhausted so far as that court is concerned, and to take this case back again involves an absurdity not authorized by the words or object of the statute.

2. The statutes applicable to writs of error and the decisions of this court do not in any event discriminate between the *decisions* of the *different terms* of the Supreme Court of the District of Columbia for the purposes of that writ.

Sec. 846 (Revised Statutes, District of Columbia) is as follows:

"Any *final judgment*, *order*, or *decree* of the *Supreme Court* of the District may be re-examined and reversed or affirmed in the Supreme Court of the United States, upon writ of error or appeal, in the same cases and in like manner as provided by law in reference to the final judgments, orders and decrees of the Circuit Court of the United States."

And section 753 (Revised Statutes, District of Columbia) provides among other things that the "judgments, decrees, sentences, orders, proceedings, and acts of the general terms, *special terms*, circuit courts, district courts, and criminal courts, rendered, made, or had, are, and shall be, deemed judgments, decrees, sentences, orders, proceedings, and acts of the *Supreme Court*."

In the case of Ormsby *vs.* Webb (U. S. Reports, Vol. 134, p. 58), in an opinion delivered by Justice Harlan, this court says:

"A will admitted to probate and record by a court of competent jurisdiction is a muniment of title for all receiving property under it, and, until the order so admitting it to probate is, by some appropriate proceeding, set aside or reversed, stands in the way of those who may have resisted the probate. In every sense it is a final adjudication."

And the court further says in the same case, referring doubtless to the statutes above cited, and at page 65:

"A proceeding in this district for the probate of a will, although of a peculiar character, is nevertheless a case in which there may be adversary parties, and in which there may be a final judgment affecting rights of property. It comes within the very terms of the act of Congress defining the cases in the Supreme Court of this District, the final judgments in which may be re-examined here. If it be not a case in equity it is to be brought to this court upon writ of error, although the proceeding may not be technically one at law, as distinguished from equity."

(Metropolitan R. R. Co. *vs.* Moore. U. S. Reports, Vol. 121, page 573. Opinion by Mr. Justice Matthews.)

"The appeal from the special to the general term is not an appeal from one court to another, but is simply a step in the progress of the cause during its pendency in the same court. The Supreme Court sitting at special term and the Supreme Court sitting in the general term, though the judges may differ, is the same tribunal."

It is submitted, therefore, that under the statute, a party aggrieved can invoke the writ as much against the judgment of one term as of another, and especially in litigation of this kind are the provisions of the statute available, where the review of the General Term has been had before the judgment on the issue is entered in the term that originated the proceedings.

In McIntire *vs.* McIntire, No. 1128, Oct. Term, 1892, a cause coming to this court from the Supreme Court of the District of Columbia, and similar, it is believed, to the one under discussion, a motion to dismiss the writ of error was made on the ground that, although an appeal was taken to the General Term from the order admitting the will to probate, that appeal was not perfected under

the rules of the General Term and was consequently dismissed. An appeal not perfected may be regarded essentially as an appeal not taken. The motion to dismiss the writ of error in McIntire *vs.* McIntire was not sustained and, although no opinion was rendered, it is presumed that the decision of the court was based upon reasons applicable to the motion in the present case and apparent from the statutes and decisions here cited.

The motion should be overruled.

(CAUSE No. 991.)

Although there are two writs, there is but one cause brought up, and the court will determine, when it comes to examine the case, by which it is properly here. (Hurst *vs.* Hollingsworth, 94 U. S., 111.)

The writ of error in Cause No. 992 is believed to be in conformity with the practice as pointed out in Ormsby *vs.* Webb (134 U. S., p. 56) citing Van Ness *vs.* Van Ness, 6 How., p. 67, as follows:

"It is true the Orphans' Court has no power to grant a new trial, and is bound to consider the fact to be as found by the jury; and consequently the judgment of that court must be against the plaintiff. But the matter in contest in the Orphans' Court is the right to the letters of administration. And it is the province of *that court* to apply the law upon that subject to the fact, as established by the verdict of the jury, and to make *their* decree accordingly; refusing to revoke the letters granted to the defendant, and *dismissing the petition* of the plaintiff. The *suit* between the parties *must remain* still *pending* until that decree is pronounced. The certificate from the Circuit Court is nothing more than evidence of the finding of the jury upon the trial of the issue. It merely certifies a fact, that is to say, that the jury had so found. And the order of the *Circuit Court*, directing a fact to be certified to *another court* to enable *it to proceed* to *judgment*, can hardly be regarded as *a judgment*, order or decree, in the legal sense of these terms as used in the

act of Congress. Certainly it is not a final judgment or order. For it does not put an end to the suit in the Orphans' Court, as that court *alone can dismiss* the petition of the plaintiff which is there pending; and *no other court* has the power to pass a judgment upon it. A verdict in any court of common law, if not set aside, is in all cases conclusive as to the fact found by the jury, and the judgment of the court must follow it; as the Orphans' Court must follow the verdict in this case. Yet, a writ of error will not lie upon the verdict."

This case is brought here in two ways because there appears to be a conflict both in reason and authority between the conclusions in Van Ness *vs.* Van Ness and the following authorities which are thought to show that the writ of error should be directed to the judgment of the General Term affirming the action of the Special Term and where the issues on the validity of the will were finally determined. The decisions supposed to be in conflict with the citation from Van Ness *vs.* Van Ness are briefly given as follows:

(Phillips' U. S. Sup. Court Practice, page 84.) "Where the decision of a common law court finally disposes of the case, whether it be on demurrer or otherwise, a writ of error will lie, and this though the judgment may not be *technically drawn or entered up.*" (New Orleans R. R. *vs.* Morgan, 10 Wall., 256; Rogers *vs.* Burlington, 3 *Id.*, 654.)

(Phillips' U. S. Sup. Court Practice, page 85.) "An order striking out an answer, *as it ends the cause*, leaves the action undefended, and confers *the right to* an immediate *judgment*, is reviewable on writ of error as a final judment." (Fuller *vs.* Clafflin, 93 U. S., 14.)

(Phillips' U. S. Sup. Court Practice, page 93.) "A decree is final for the purposes of an appeal when it *terminates* the litigation between the parties *on the merits* and leaves nothing to be done but to enforce by execution what has been determined." (St. Louis R. R. Co. *vs.* Express Co., 108 U. S., 28.)

Phillips' U. S. Sup. Court Practice, page 95.) "When, however, by *any direction* the *entire cause* is *determined*, the decision when reduced to form and entered on the record constitutes a final judgment or decree, whatever may be its technical designation." (Commissioners *vs.* Lucas, 93 U. S., 108.)

(Phillips' U. S. Sup. Court Practice, page 93.) "In the Missouri R. R. Co. *vs.* Dinsmore, the decree fixed the rate of compensation 'until the further order of the court,' and referred the case to a master 'to take and state an account as to the compensation that should be paid during the litigation.' The court held that the reference was as to matters affecting the *administration of the cause*, and did not involve the merits, and that the decree was final." (108 U. S., 30; *Ex parte* Norton, *Id.*, 242).

The order admitting will to probate affected only minor details of the "*administration*" *of the estate*. The *validity* or *admissibility* to probate of the will was determined by the trial and the affirmance of the General Term, and if the probate order repeats these findings it is surplusage.

The reasoning in the citation from Van Ness *vs.* Van Ness is based upon the independence of the two tribunals, and the fact that the cause having been begun in the Orphans' Court, a separate tribunal, must be ended by some decree passed there "as that court *alone can dismiss* the petition of the plaintiff which is there pending." The act of June 21, 1870, consolidating the courts, changed all this and took away the foundation of the opinion in Van Ness *vs.* Van Ness. The same court in which the petition is filed now tries and determines the issues, and must be conscious of its own findings. Whether the verdict receives judicial sanction by the implication of being permitted to stand, or by an entry directing the verdict to be certified, or by an order overruling a motion to set aside the verdict, is wholly imma-

terial, as the verdict, having received express or implied judicial sanction, is a judgment for the purposes of this litigation. Any other view would ignore the relation of the trial judge to the finding of the jury over which he has also statutory control (Md. Act, 1878). In this trial he exercised that authority to the full limit and directed a verdict.

In view of the statutes and decisions cited, the various terms of the Supreme Court of the District of Columbia, being all one and the same tribunal, the act of one is the act of the other, and a judgment on the merits in General Term approving one below being essentially a judgment of the whole tribunal and all its terms, is *ipso facto* conclusive of the case in every branch of that court. It need not in law be certified to any particular term of the court to make it there conclusive, and the issuing of the certificate is, so far as this proceeding is concerned, simply a form of judicial book-keeping, in analogy with the old practice when the Orphans' Court was an independent tribunal, and now useful only for the purpose of maintaining a distinct set of records for probate cases.

The old practice should be no longer permitted to confuse this matter. Under the new system (the act of June 21, 1870, 16 Statutes, 160, abolishing the Orphans' Court and conferring its powers on the Supreme Court of the District of Columbia) the order directing probate should furnish only a reference to the finding of the General Term which is the *final judgment*, and to which the writ of error should be directed.

In the order of the General Term, hereinbefore given in full, an order drawn doubtless by the counsel for the defendants in error, the findings of the Special Term, at the trial of the issues, are described as *a judgment* and so approved, and, if a judgment, it was one of the same court where the issues originated and concluded them.

Recapitulation.

In this case, as in all cases of like character, issues are framed in the Orphans' Court.

The trial of these issues is in the Circuit Court.

From the proceedings at such trial an appeal is taken to the General Term.

The General Term passes upon the action of the Circuit Court at such trial and renders its judgment; in this case affirming the action of the Circuit Court, in which a verdict was directed against the caveators, *i. e.*, that there was no undue influence, no fraud.

This verdict thus affirmed was conclusive of the case. It was final because there was nothing left for the Orphans' Court to do but admit the will to probate, an act purely perfunctory.

To again appeal the case to the General Term would be useless formality.

The affirmance of the action of the Circuit Court was a final disposition of the validity of the will, and thereafter the proceedings were essentially formal in the Probate Court, both courts being but one tribunal.

All the evidence was taken in the trial in the Circuit Court; it was before the General Term, and it is from the action of the Circuit Court in withdrawing the case from the jury and directing a verdict on that evidence in favor of the caveatees and also on exceptions taken during the trial that the case went on appeal to the General Term.

If a second appeal after the will was admitted to probate were required it must result in either a second review of the evidence by the General Term, or the asking that term to review the admission to probate of the will, when that admission was in substance carrying into effect the mandate of the General Term in that regard.